SUPREME COURT, U. S.

FILED

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-2023

COUNTY OF SAN DIEGO AND THE SHERIFF OF THE COUNTY OF SAN DIEGO,

Petitioners,

v.

RINCON BAND OF MISSION INDIANS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TOPICAL INDEX

Page

OPINION BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

QUESTION PRESENTED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT
THE DECISION BELOW CONFLICTS WITH A SUBSEQUENT DECISION OF THE UNITED STATES SUPREME COURT REGARDING THE PROPER INTERPRETATION AND APPLICATION OF 28 USC § 2201 [28 USCS § 2201]. 5

CONCLUSION 8

APPENDIX A—DISTRICT COURT OPINION ..... App. A-1

APPENDIX B—COURT OF APPEALS' OPINION ..... App. B-1

APPENDIX C—STATUTORY PROVISIONS ..... App. C-1

TABLE OF AUTHORITIES

Cases

Page

Doe v. Bolton, 410 U.S. 179, 35 L.Ed.2d 201, 93 S.Ct. 739, reh. den. 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1410 (1973) 5

Epperson v. Arkansas, 393 U.S. 97, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968) 5, 6

O'Shea v. Littleton, ... U.S. ....., 38 L.Ed.2d 674, 94 S.Ct. 669 (Jan. 15, 1974) 5

Steffel v. Thompson, ... U.S. ....., 39 L.Ed.2d 505, 94 S.Ct. 1209 (March 19, 1974) 6, 7

Constitution

United States Constitution Art. III 2, 6

United States Code

18 USC § 1162 2

28 USC § 1254(1) 2

28 USC § 1331 4

28 USC § 1360 2

28 USC § 1362 4

28 USC § 2201 ..... 2, 4, 5

San Diego County Code

§§ 37.101 - 37.105 2

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The petitioners are the County of San Diego, a political subdivision of the State of California, and the Sheriff of the County of San Diego. The petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on March 18, 1974.

OPINION BELOW

The opinion of the District Court (App. A of this Petition) is reported at 324 F.Supp. 371 (S.D. Cal. 1971). The opinion

of the Court of Appeals and the dissenting opinion (App. B of this Petition) are reported at 495 F.2d 1 (C.A.9 1974).

JURISDICTION

The judgment of the Court of Appeals was entered on March 18, 1974. A timely petition for rehearing was denied on April 19, 1974, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC § 1254(1) [28 USCS § 1254(1)].

STATUTORY PROVISIONS INVOLVED

The pertinent provisions involved are Article III of the United States Constitution, the Federal Declaratory Judgment Act, codified as 28 USC § 2201 (28 USCS § 2201), Public Law 280, codified as 18 USC § 1162, and 28 USC § 1360 (18 USCS § 1162 and 28 USCS § 1360) and the San Diego County Card Rooms and Gambling Ordinance (San Diego County Code, Title 3, Div. 7, ch. 1, §§ 37.101 - 37.105). These statutory provisions are set out in Appendix C of this Petition.

QUESTION PRESENTED

Whether there exists between the County of San Diego and the Rincon Band of Mission Indians a case of actual controversy as required by Article III of the United States Constitution and by the Federal Declaratory Judgment Act concerning the County's enforcement of its card rooms and gambling ordinance on the Rincon Indian Reservation in view of the provisions of Public Law 280, which granted jurisdiction over Indian lands.

STATEMENT OF THE CASE

On February 9, 1960, the Board of Supervisors of the County

of San Diego duly adopted the County's card rooms and gambling ordinance which prohibits all gambling activities in the unincorporated areas of the County. The ordinance, which became effective on April 1, 1960, is presently in full force and effect. The Rincon Indian Reservation is located within an unincorporated area of the County and held in trust by the United States of America.

On October 1, 1970, the Rincon Band adopted a tribal ordinance authorizing the establishment of a card room on the reservation where certain card games not prohibited by State statute could be played. By letter of October 8, 1970, to counsel for the County (incorporated into the Band's pleadings), the Band's attorneys stated that several members of the Band had been informed by representatives of the Sheriff's Department that under the County's card rooms and gambling ordinance all gambling in the unincorporated areas of the County was illegal and that the ordinance would be enforced against all persons on the Band's reservation.

By letter of October 21, 1970, to the Sheriff (incorporated into the Band's pleadings), the Band's attorney requested from the Sheriff a written statement of County policy regarding the County's jurisdiction to enforce its card rooms and gambling ordinance on the Band's reservation. By letter of October 23, 1970, (incorporated into the Band's pleadings), the Sheriff replied that ". . . State law, as well as the County ordinance, is quite specific relative to gambling, and all of the laws of San Diego, State, Federal and County, will be enforced within our jurisdiction," and that ". . . we feel that the laws of the State and the County are not made for a few, but meant to include everyone, and they shall be administered in that manner." The Sheriff

in his December 11, 1970, affidavit in support of the County's motion for summary judgment in the District Court declared that he had been and was presently enforcing the County's card rooms and gambling ordinance to all persons equally in the unincorporated areas of the County.

On November 4, 1970, the Band filed a complaint under 28 USC § 1331 (28 USCS § 1331), 28 USC § 1362 (28 USCS § 1362) and 28 USC § 2201 (28 USCS § 2201) for declaratory and injunctive relief challenging the County's jurisdiction to enforce its card rooms and gambling ordinance on the Rincon Indian Reservation. The Band specifically alleged in its complaint a history of past arrests for gambling on the Reservation and irreparable injury to the Band since its members would be subject to arrests and criminal trials with all of the attendant uncertainties, inconveniences and expenses. The January 21, 1971, affidavit of Frank Mazzetti, Jr., Acting Chairman of the Band, in support of the Band's motion for summary judgment in the District Court, specifically alleged that several persons had been arrested for gambling at the annual fiestas held on the Band's Reservation.

On March 17, 1971, the District Court in *Rincon Band of Mission Indians v. County of San Diego,* 324 F.Supp. 371 (S.D. Cal. 1971) granted the County's motion for summary judgment, holding that the County under Public Law 280 could continue its enforcement of its card rooms and gambling ordinance on the Band's Reservation. On March 18, 1974, the Court of Appeals in *Rincon Band of Mission Indians v. County of San Diego,* 495 F.2d 1 (C.A.9 1974) reversed the District Court's judgment and dismissed the Band's complaint.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW CONFLICTS WITH A SUBSEQUENT DECISION OF THE UNITED STATES SUPREME COURT REGARDING THE PROPER INTERPRETATION AND APPLICATION OF 28 USC § 2201 [28 USCS § 2201].

On March 18, 1974, the Court of Appeals rendered its split opinion in *Rincon Band of Mission Indians v. County of San Diego,* 495 F.2d 1 (C.A.9 1974), dismissing the Band's complaint and holding that the general threat of enforcement of the County's card rooms and gambling ordinance was insufficient to meet the case or controversy requirements of Article III of the Constitution of the United States and the "actual controversy" requirement of the Federal Declaratory Judgment Act, 28 USC § 2201 (28 USCS § 2201). In his dissent, Circuit Judge Browning, citing *Doe v. Bolton,* 410 U.S. 179, 35 L.Ed.2d 201, 93 S.Ct. 739, reh. den. 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1410 (1973), and *Epperson v. Arkansas,* 393 U.S. 97, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968), disagreed by stating that the controversy in the subject cause was real and immediate. The majority on page 6 of the split opinion not only acknowledged Judge Browning's reliance on *Epperson v. Arkansas,* 393 U.S. 97, 27 L.Ed.2d 228, 89 S.Ct. 266 (1968), but also conceded with honest candor that they could not distinguish its logic and holding from the subject cause. The majority noted further, however, on page 6 of its opinion that the most recent pronouncement by the United States Supreme Court, set forth in *O'Shea v. Littleton,* ..... U.S. ....., 38 L.Ed.2d 674, 94 S.Ct. 669 (Jan. 15, 1974) reinforced its opinion that *Epperson v. Arkansas,* 393 U.S. 97, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968), was not controlling and that the subject cause did not present a case or controversy.

On March 19, 1974, however, the United States Supreme Court in the case of *Steffel v. Thompson,* ..... U.S. ....., 39 L.Ed.2d 505, 94 S.Ct. 1209 (March 19, 1974), rendered a significant subsequent pronouncement regarding the "actual controversy" test under Article III and the Federal Declaratory Judgment Act. The case involved a Georgia man who sought a declaratory relief judgment against the owners of an Atlanta shopping center after they threatened to have him arrested for handing out anti-war handbills in October, 1970. The Supreme Court in thoroughly reviewing the history of the Federal Declaratory Judgment Act and case law under the Act held that petitioner Steffel had presented an "actual controversy" under Article III of the Constitution and the Federal Declaratory Judgment Act by showing alleged threats of prosecution, which couldn't be characterized as "imaginary or speculative." In specifically emphasizing in *Steffel v. Thompson,* ..... U.S. ....., 39 L.Ed.2d 505, 94 S.Ct. 1209 (March 19, 1974), that the State of Georgia did not have an actual criminal prosecution pending against petitioner Steffel, the Supreme Court, in citing *Epperson v. Arkansas,* 393 U.S. 97, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968), held on page 514 that:

> In these circumstances, it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights. 94 S.Ct. at 1216.

The record before the Court of Appeals specifically evidenced the Band's direct challenge to the County's ordinance, a history of past arrests for gambling on the Band's reservation and the Sheriff's sworn statement that he had been and was presently enforcing the County's ordinance to all persons equally in the County's unincorporated area, which included the Band's reservation. Clearly, the Sheriff's precise sworn statement to enforce

the ordinance with its resulting prosecutions against the members of the Band cannot be characterized under *Steffel v. Thompson*, ... U.S. ....., 39 L.Ed.2d 505, 94 S.Ct. 1209 (March 19, 1974), as "imaginary or speculative." The record in the subject cause demonstrates under the *Steffel* holding a controversy which is both actual and immediate.

A decision on the merits regarding the subject cause and Public Law 280 would resolve for the Federal government, the respective state governments and the countless county governments the many pressing unanswered legal questions facing such governmental bodies. Public Law 280 daily affects governmental services at all levels and, therefore, has profound influences on the lives of both Indians and non-Indians within the respective states and counties. For example, within the unincorporated areas of the County of San Diego, there are 17 separate Indian reservations covering approximately 119,500 acres.

A decision on the merits would also clarify the surprising position regarding Public Law 280 taken by the Department of Justice on behalf of the United States. On page 6 of its *amicus curiae* brief filed on April 16, 1973, in the subject cause, the United States argued:

> It is plain that, in 1953, the congressional plan was that the United States would relinquish its title to Indian trust lands and other trust property; and state laws, supervision and control would then become applicable. However, prior to the time termination actually occurs, state jurisdiction and control under Public Law No. 280 does not extend to property held in trust by the United States or its use. . . . [Emphasis added by the United States.]

The United States submitted such *amicus curiae* brief in response to a March 13, 1973, order of the Court of Appeals.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 1974, three copies of the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were mailed, postage prepaid, to each of the following named persons:

GEORGE FORMAN, ESQ.
California Indian
Legal Services
2527 Dwight Way
Berkeley, California 94704

SOLICITOR GENERAL
Department of Justice
Washington, D.C. 20530

I further certify that all parties required to be served have been served.

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT, CALIFORNIA

March 17, 1971

RINCON BAND OF MISSION INDIANS, v. COUNTY OF SAN DIEGO and J. C. O'Connor, Sheriff for the County of San Diego.	**Civ. No. 70-360-T**

SUMMARY

Proceeding on cross motions for summary judgment in action wherein Indian band sought declaratory and injunctive relief from enforcement of county gambling ordinance on Indian reservation. The District Court, Turrentine, J., held, inter alia, that card room and gambling ordinance of San Diego County prohibiting, inter alia, letting or use of property for gambling purposes, and betting on card games such as draw poker, is aimed squarely at conduct, not land use, and fact that scheme of enforcement also makes liable those who furnish premises used for forbidden activity is not enough to convert statute into a zoning ordinance, much less an "encumbrance," within statute authorizing application of criminal laws of state to Indian trust lands provided laws did not constitute an encumbrance on lands.

Plaintiff's motion for summary judgment denied; defendant's motion for summary judgment granted.

MEMORANDUM OF DECISION

TURRENTINE, District Judge.

Plaintiff, Rincon Band of Mission Indians, seeks declaratory and injunctive relief from enforcement of a county gambling ordinance on an Indian reservation. The action is now before the court on cross motions for summary judgment. The court has determined from the affidavits, memoranda and argument of counsel that there is no genuine issue of material fact. This memorandum of decision incorporates findings of fact and conclusions of law.

Plaintiff is an Indian Band with a governing body duly recognized by the Secretary of the Interior, and said Band is a governing body of the Rincon Indian Reservation. The Reservation, containing approximately 3500 acres, is located within the unincorporated area of the County of San Diego, California. These lands are held in trust by the United States for the benefit of plaintiff.

On October 1, 1970, plaintiff adopted a tribal ordinance authorizing the establishment of a card room on the Rincon Indian Reservation where certain card games not proscribed by the state statute on gambling would be played. Cal.Pen.Code § 330. Revenues derived from this operation would accrue to the Rincon Band. These plans were suspended when the Sheriff of San Diego County, in response to plaintiff's inquiry, declared that such an enterprise would be in violation of a county criminal ordinance entitled Card Rooms and Gambling, San Diego County Code, Division 7, Chapter 1, Title 3, §§ 37.101 through 37.105 inclusive. This ordinance prohibits, *inter alia*, the letting or use of property for gambling purposes, and betting on card games such as draw poker. In his letter to plaintiff, the Sheriff expressed

a fear that the Rincon Indian Reservation might become a "little Las Vegas." This ordinance is presently in full force and effect throughout the unincorporated areas of the county. Plaintiff does not allege that the ordinance is not being enforced equally among all inhabitants of the county.

Any jurisdiction of San Diego County to apply its gambling ordinance to Indian trust lands derives from a federal statute, Public Law 280, 67 Stat. 588, codified as two federal statutes, 18 U.S.C. § 1162 and 28 U.S.C. § 1360. 18 U.S.C. § 1162 grants to certain states, including California, full criminal jurisdiction over Indian lands within these states. 28 U.S.C. § 1360 embodies a corresponding grant to the states of civil jurisdiction over Indian lands. Each statute qualifies the grant by excluding certain types of state laws.

The initial issue is whether the San Diego County ordinance qualifies as a criminal law of the State of California within the meaning of 18 U.S.C. § 1162; if it is a criminal law of the state, then it will apply to plaintiff unless it falls within one of the classes of legislation excepted from the federal grant of jurisdiction. This question has received little discussion in the case law. In a recent federal decision, it was held that a "rock festival" ordinance of Riverside County was a law of the state of California and that its provisions applied to Indian lands by virtue of the jurisdictional grant contained in Public Law 280. Madrigal v. County of Riverside, Civil No. 70-1893, C.D.Cal., Findings of Fact and Conclusions of Law dated February 16, 1971. The court relied in part on a Washington decision, Snohomish County v. Seattle Disposal Company, 70 Wash.2d 668, 425 P.2d 22 (1967), cert. denied 389 U.S. 1016, 88 S.Ct. 585, 19 L.Ed.2d 662. The case there involved application of a county zoning ordinance to a garbage dump operated by a non-Indian

lessee of Indian trust lands. The provisions of Public Law 280 apply in the state of Washington. It was held that the ordinance could not be applied to the garbage dump because the ordinance was an encumbrance on the Indian trust lands. Public Law 280 provides that state laws may not be applied to Indian trust lands if they constitute encumbrances on the lands. 18 U.S.C. § 1162; 28 U.S.C. § 1360. There was no discussion of whether the ordinance there qualified as a law of the state, but implicit in the result is the assumption that the ordinance is a law of the state; if it were not a state law within the meaning of Public Law 280, it would have no application to Indian lands, and the necessity for discussing whether it fell within the category of state laws imposing encumbrances would not have arisen.

Justices Douglas and White dissented from the Supreme Court order denying certiorari on the ground that important federal questions were presented: whether the ordinance constituted an "encumbrance" as that word is used in Public Law 280; whether a non-Indian lessee was entitled to any immunity that the Indian owner might possess; and whether an administrative regulation of the Secretary of the Interior unduly restricted the state's authority under Public Law 280 and 25 U.S.C. § 231.[1] 389 U.S. 1016, 1019, 1020, 88 S.Ct. 585, 19 L.Ed.2d 662. However, as in the state decision, this discussion is predicated on the ordinance being a law of the state.

[1] It appears that the purpose of Congress in passing Public Law 280 was to permit the Indians to become full and equal citizens of their respective states and to terminate the wardship

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[1] 25 U.S.C. § 231 states that the Secretary of the Interior shall permit state agents to enter on Indian lands to enforce health and education laws provided that self governing tribes have consented to this state authority.

of the federal government over their affairs. The House committee report on this legislation, which was incorporated in the Senate report, notes that:

> This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such. H.R.Rep. No. 848, 83d Cong., 1st Sess. (1953) 2 U.S. Code, Cong. & Admin. News, p. 2409 (1953).

In the years preceding passage of the legislation, studies were made by the Department of the Interior to determine whether the states were able and willing to assume responsibilities for the administration of civil and criminal justice for their Indian populations. A letter from Mr. Orme Lewis, Assistant Secretary of the Interior, to the Honorable A. L. Miller, Chairman of the Committee on Interior and Insular Affairs, published in the House report, stated:

> The Bureau of Indian Affairs of this Department has consulted with State and local authorities and with the Indian groups on the question of transfer of civil and criminal jurisdiction on the States in the following States: California * * *.
>
> In each of the States mentioned, with the exception of Nevada, State and local authorities indicated their agreeableness to the proposed transfer of jurisdiction. *Id.* at p. 2413.

[2] It is frankly conceded that even if the statute had not contemplated the legislative jurisdiction of local governments, local authorities would probably have been consulted in their capacities as enforcement agencies for state law. However, this reference to local authorities, taken together with the purpose of the legislation to make the Indians full and equal citizens,[2]

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[2] See Snohomish County v. Seattle Disposal Company, 70 Wash. 2d 668, 674, 425 P.2d 22, 27 (1967).

suggests that the local governments would assume the same role in relation to Indian citizens as they occupy with respect to the other citizens of the state. And when we examine the position of the average state citizen, we find that he is confronted with a panoply of overlapping and complementary legislation emanating from local and state lawmakers. If, with respect to a significant element of the population, local authorities were denied their customary and proper role in this scheme of regulation, the states would find it necessary to legislate on many subjects now wisely left to local authorities; all citizens, Indians included, would be denied the benefits of local attention to local requirements.

[3] One clause of the statute, taken by itself, appears to contradict this view of the role of local government under Public Law 280, that portion which reads: "* * * and the criminal laws of such State or Territory shall have the same force and effect within such Indian country *as they have elsewhere within the State or Territory.*" (emphasis supplied.) If this language means that a law must apply the length and breadth of a state before it could be applied on Indian lands, then a county ordinance could not be enforced on a reservation inasmuch as it has no effect "elsewhere" in California than the county of origin. Considering the objectives of the statute, however, it is more reasonable to conclude that this phrase was inserted to assure equal treatment of the Indians with all other citizens and not to exempt Indian lands from local laws. If Congress had desired to limit the legislative authority of local government, and in so doing create a very unique relationship of Indians to the state, it could have done so by express language in the statute. The overwhelming evidence of the language and the legislative his-

tory and background show a contrary intention. Congress has shown no inclination to change the customary meaning of the phrase "law of a state" as it is usually interpreted.[3]

In California, city and county governments have the authority to make and enforce "all local, police, sanitary and other ordinances and regulations not in conflict with general laws." Cal. Const., Art. 11, § 7. It has been held that the power delegated to local government by this provision is "as broad as that of the legislature itself provided only that its exercise by any city must be confined to such city and must not conflict with the laws of the state." People v. Taylor, 33 Cal.App.2d Supp. 760, 761, 85 P.2d 978 (1938). In the matter of gambling, the state has a criminal statute which proscribes participation in certain specified games and types of games. Cal.Pen.Code. § 330. Beyond this, local governments in the exercise of their general police power either permit or prohibit the establishment of public card rooms for the playing of card games not prohibited by the state statute. Thus it is that in many cities of California draw poker players may indulge their interest freely, while "hokey pokey" players are condemned by the law to inaction. It has been held that the state has not preempted the field of gambling regulation and that additional legislation is a proper subject for local decision. In re Hubbard, 62 Cal.2d 119, 41 Cal.Rptr. 393, 396 P.2d 809 (1964); People v. Mason, 261 Cal.App.2d 348, 68 Cal.Rptr. 17 (1968).

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[3] The Restatement of Conflicts, § 2b:

The body of law of a state is not necessarily applicable equally to all persons or places within the state. Thus, different classes of persons or different localities may be governed by different laws, or local subdivisions of the state may be allowed by the state to make laws applicable in some particulars within their own boundaries. All such laws, however, form a portion of the law of the state.

[4] This subject of legislation is one where state and local authorities together prescribe the standards operative in a particular area. It would be as unlawful and as destructive of the full and equal citizenship of Indian citizens to exempt them from local laws on gambling as it would be to deny them specific benefits of county laws solely because of their Indian status.[4] Plaintiff argues that to allow the counties to exercise legislative authority over Indian lands would be to invite the expression of local hostilities and prejudice. There is no reason to assume that local governments are not qualified and disposed to render fair treatment to all of their citizens. This suit was in fact occasioned by the Sheriff's declaration that "the laws of the State and the County are not made for a few, but meant to include everyone, and they shall be administered in that manner." The advantage of local regulation accrues to Indians as well as other citizens. In this case, the proper recourse is to convince the County Board of Supervisors that a change in the law is desirable; plaintiff need not attempt the more onerous task of convincing the state legislature.

[5] It is next contended by plaintiff that if the county ordinance is a law of the state of California, then its enforcement on Indian trust lands is unlawful because it amounts to an encumbrance on those lands. The statute provides in part:

> "Nothing in this section shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band or

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[4] In the case of Acosta v. County of San Diego, 126 Cal.App.2d 445, 272 P.2d 92 (1954), it was held that under federal and state law Indians residing in reservations are residents of the state and county for the purposes of receiving regular welfare benefits.

community that is held in trust by the United States * * *." 18 U.S.C. § 1162(b).

It is asserted that the gambling ordinance on its face regulates the use of lands of the Rincon Reservation by prohibiting the operation of a card room. To reach this result, the court would have to apply the very broad definition of encumbrance adopted by the Washington Supreme Court in the *Snohomish* case. There the court forbade application of the county zoning ordinance because it was an encumbrance, defining that term as "any burden upon land depreciative of its value, such as a lien, easement or servitude, which, though adverse to the interest of the landowner, does not conflict with his conveyance of the land in fee"; a Washington decision was cited for the quoted language. 70 Wash.2d 668, 672, 425 P.2d 22, 26. Whatever the term encumbrance denotes in Washington law, this court finds no warrant for expanding the definition of encumbrance as that term appears in Public Law 280 beyond its usual application indicating a burden on the land imposed by third persons which may impair alienability of the fee, such as a mortgage, lien, or easement. See Snohomish County v. Seattle Disposal Company, 70 Wash.2d 668, 674, 425 P.2d 22, 28 (1967) (Dissenting Opinion). Cf. Kirkwood v. Arenas, 243 F.2d 863, 867 (9th Cir. 1957).

[6, 7] The use of the word encumbrance in series with "alienation" and "taxation" indicates that Congress intended by these three words to protect the Indian from himself and swindlers, to prevent the taking of his lands by artifice or by law. Compare this language with similar terms employed for the same purpose in the Mission Indian Relief Act and the General Allotment Act, discussed in Kirkwood v. Arenas, *supra* at 866. Later in the same statute it is provided that nothing in the section "shall authorize regulation of the use of such property in a manner inconsistent

with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto." 18 U.S.C. § 1162(b). If all state laws regulating land use were made inapplicable by the earlier language describing encumbrances, then this language would be totally unneeded. In construing a statute, courts whenever possible avoid a construction which renders part of the statute superfluous. Consolidated Flower Shipments, Inc., Bay Area v. Civil Aeronautics Board, 205 F.2d 449 (9th Cir. 1953).

Moreover, whether or not a zoning law such as that in the *Snohomish* case is an encumbrance, we are confronted here not with a zoning ordinance but with a criminal statute; even the broad definition of encumbrance adopted by the majority opinion in *Snohomish* would not require that this criminal statute be regarded as an encumbrance. This view has been expressed by the California courts in the case of People v. Rhoades, 12 Cal.App.3d 720, 90 Cal.Rptr. 794 (1970). There the defendant, an Indian living on trust lands, had been convicted of violating Public Resources Code § 4291, which required a person who owns any building on forested lands to maintain a fire break around the building. The court found that the word "encumbrance" was used in 18 U.S.C. § 1162 to protect the Indians from exploitation and alienation of their lands. The court noted that there was no basis for the position that the firebreak requirement would depreciate the value of property even if measured by the *Snohomish* standard. It went on to state:

> We do not accept the proposition * * * that Congress by its use of "encumbrance" intended to give Indians or Indian trust lands (alone among a state's inhabitants) a free ticket to endanger the state's forest and grass lands, an interpretation of the restrictive clause of Public Law 280 which is strained and unnecessary. *Id.* at 726, 90 Cal.Rptr. at 797.

[8] There is no doubt that the card room would generate certain revenues for plaintiff even if operations there did not reach the impressive proportions seen by the Sheriff in his vision of a "little Las Vegas"; other activities classified as criminal conduct are even more lucrative. To take plaintiff's argument to its logical conclusion, it seems that the state could only prohibit Indians on trust lands from engaging in unprofitable criminal acts. It has always been permissible and necessary for a state in the exercise of its police powers to regulate certain forms of conduct to promote the general welfare and to protect the health and well being of its citizens. The county ordinance is aimed squarely at conduct, not land use, and the fact that the scheme of enforcement also makes liable those who furnish the premises used for a forbidden activity is not enough to convert the statute into a zoning ordinance, much less an encumbrance within the meaning of Public Law 280.

Plaintiff's final claim is that the gambling ordinance may not be applied to Indian trust lands because it is inconsistent with federal statutes, regulations and policies. 18 U.S.C. § 1162(b) provides in part:

> "(b) Nothing in this section * * * shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement or statute or with any regulation made pursuant thereto * * *."

[9] The first inconsistency found by plaintiff derives from an administrative regulation of the Secretary of the Interior which provides that none of the laws, ordinances or other regulations of a State or political subdivision which limit, zone or otherwise regulate the use of real or personal property shall apply to Indian trust lands unless the Secretary "in specific cases" adopts or makes applicable these laws to Indian trust lands. 25 C.F.R. §

1.4.[5] The Secretary has adopted zoning laws of the State of California, but he has decreed that such laws or regulations of cities and counties would be adopted and applied by "separate action." 30 Fed.Reg. 8722.[6] He has not adopted the county ordinance in question. As the court has decided that this gambling ordinance is not a law regulating the use of property, the administrative regulation by its terms is inapplicable to this controversy.

[10, 11] In addition, this regulation is void insofar as it pur-

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[5] The text of this regulation reads: § 1.4 State and local regulation of the use of Indian property. (a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. (b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographical areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[6] See County of San Bernardino v. La Mar, 271 Cal.App.2d 718, 76 Cal.Rptr. 547 (1969).

ports to enlarge or restrict the scope of jurisdiction afforded by Public Law 280. Madrigal v. County of Riverside, No. 70-1893-EC, C.D.Cal., Findings of Fact and Conclusions of Law dated February 16, 1971. It appears from the Secretary's initial public statement concerning this regulation that it is merely an interpretation of existing law[7] and as such is fully reviewable by the courts. For a state law to be unenforceable due to conflict, there must exist a conflict between it and a treaty, agreement, statute or a regulation made under the authority of one of these three types of laws. It has been held by the Supreme Court that the provisions of 25 U.S.C. §§ 2 and 9, granting to the President the power to prescribe regulations for the conduct of Indian affairs do not embody a general grant of power to make rules for Indian conduct but are merely authority to implement specific laws. Organized Village of Kake v. Egan, 269 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962). There the court found that 25 U.S.C. §§ 2 and 9 did not authorize regulations of the Secretary which allowed maintenance of fish traps outside an Indian reservation in conflict with laws of the State of Alaska. The court is unaware of any other authority for the Secretary to issue a "legislative" type of administrative regulation in this area. It is finally asserted that a conflict exists between the ordinance and federal policy toward the Indians to allow their independence and to encourage their economic self-sufficiency. Plaintiff points to 28 U.S.C. § 1360(c) as an expression of that policy:

> Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant

[7] 30 Fed.Reg 6438 (May 8, 1965).

APPENDIX B

IN THE

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

March 18, 1974

RINCON BAND OF MISSION INDIANS, *Appellants,* v. COUNTY OF SAN DIEGO and J. C. O'Connor, Sheriff for the County of San Diego. *Appellees.*	**No. 71-1927**
ELIZABETH RICCI, *Appellant,* v. COUNTY OF RIVERSIDE, et al., *Appellees.*	**No. 72-1256**
LELA MADRIGAL, *Appellant,* v. COUNTY OF RIVERSIDE, et al., *Appellees.*	**No. 71-2043**

SUMMARY

The Rincon Band of Mission Indians brought an action for declaratory judgment and injunctive relief from enforcement on its reservation of a San Diego gambling ordinance. The United

States District Court for the Southern District of California, Howard B. Turrentine, J., found that the county gambling ordinance was a state law and that it was not an encumbrance on trust property or a regulation of the use of trust property in any manner inconsistent with any federal statute, 324 F.Supp. 371. On appeal, the action was consolidated with appeals from rulings of the United States District Court for the Central District of California, E. Avery Crary, in two other actions which also purported to raise the issue whether county ordinances were applicable to Indian reservations within the counties. The Court of Appeals, Murphy, District Judge, held that a mere general threat of enforcement of the county gambling ordinance, in the absence of any arrests under such ordinance, was insufficient to meet the case and controversy requirements of the Constitution and the "actual controversy" requirement of the Declaratory Judgment Act; that in the second action the plaintiff's case was moot where the trial court had already awarded her protection from application of the county building code in question; and that, in the third action, plaintiff had failed to show that alleged interference with the holding of a rock festival on her land presented grounds for federal jurisdiction under either the civil rights or federal question statutes.

Complaints dismissed.

Browning, Circuit Judge, concurred in part and dissented in part and filed opinion.

Before BROWNING and TRASK, Circuit Judges, and MURPHY, District Judge.*

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*Honorable Thomas F. Murphy, Senior United States District Judge, Southern District of New York, sitting by designation.

MURPHY, District Judge:

Each of these three appeals is from a separate judgment of the United States District Court of California, the first from the Southern District, the other two from the Central District. The appeals were consolidated for argument, since each purported to present a similar legal issue, *viz.*, whether ordinances of Riverside and San Diego Counties relating to gambling, building and outdoor festivals are applicable to Indian reservations within those counties by virtue of Public Law 280 by which Congress, in 1953, granted to several states, including California, civil and criminal jurisdiction over Indian reservations. 67 Stat. 588; 18 U.S.C. § 1162; 28 U.S.C. § 1360.

There is, however, in each appeal a vexing initial question of jurisdiction either of this Court or the District Court. Firstly, we will consider such a question in *Rincon.*

In *Rincon,* the Rincon Band of Mission Indians, with a governing body duly recognized by the Secretary of Interior, sought a declaratory judgment and injunctive relief from the enforcement on its reservation of a San Diego gambling ordinance. The reservation is located within an unincorporated area of San Diego County, California, and held in trust by the United States. Jurisdiction was asserted under 28 U.S.C. §§ 1331 (federal question), 1362 (Indian Tribes), and 2201 (declaratory judgment).

The San Diego ordinance[1] has been in effect since 1960 and prohibits the use of property for gambling purposes and betting on card games, such as draw poker. On October 1, 1970, the Rincon Band adopted a tribal ordinance authorizing the establishment of a card room on the reservation where certain card games

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[1] Card Rooms and Gambling, San Diego County Code, Title 3, Div. 7, Ch. I, §§ 37.101 - 37.105.

not prohibited by state statute could be played. The revenue derived therefrom would be for the benefit of the Band.

On cross motions for summary judgment the District Court (Turrentine, J.), in a reasoned opinion, granted the motion of the defendants. In substance, it found (a) that the county gambling ordinance was a state law within the meaning of Public Law 280, and (b) that such ordinance was not an encumbrance on trust property or a regulation of the use of trust property in any manner inconsistent with any federal statute. (Rincon Band of Mission Indians v. County of San Diego, 324 F.Supp. 371 (S.D.Cal. 1971).

[1] No consideration was given to the question nor was it briefed, *i.e.*, whether the "case or controversy" requirement of Article III of the Constitution is satisfied by the general allegation of a threat of enforcement against the Rincon Band of Mission Indians or its members of the county gambling ordinance.

Accordingly, we detail the relevant facts contained in the affidavits and exhibits that were before the District Court on the motions for summary judgment.

On October 1, 1970, the plaintiff, through its tribal council, passed a tribal ordinance permitting limited gambling activities not prohibited by the Penal Code of the State of California. The ordinance is described as "An ordinance of the Rincon Band of Mission Indians, Rincon Reservation, to provide for the authorization and establishment of a card room on the Rincon Reservation, Valley Center, California." The purpose of the ordinance is "to remove any possible question as to the propriety of tribal members participating in traditional tribal games of chance and to encourage the economic development and progress of the Rincon Indian Reservation" through the establishment of a tribally run card room.

"The people of the Rincon Reservation have regularly held fiestas each year in order to raise funds for tribal development. At various times, activities at these fiestas including traditional tribal games of chance, and often many non-Indians would come to the fiestas and participate in these games. Several persons have been arrested for gambling at our fiestas." (Affidavit of Frank Mazzetti, Jr., Acting Chairman of the Rincon Band of Mission Indians.)

On October 8, 1970, in a letter to the County of San Diego's counsel, the Band's attorneys alleged that several members of the Rincon Band were informed by representatives of the San Diego County Sheriff's Department that under the county gambling ordinance all gambling in unincorporated areas of the county was illegal and that the ordinance would be enforced against persons on the Rincon Reservation.

In that letter of October 8th and in subsequent correspondence the Band's attorneys requested a written statement of county policy as to the county's jurisdiction to enforce its gambling ordinance on the Rincon Reservation.

On October 23, 1970, the county sheriff, defendant J. C. O'Connor, replied that "* * * State law, as well as the County ordinance, is quite specific relative to gambling, and all of the laws of San Diego, State, Federal and County, will be enforced within our jurisdiction," and that "* * * we feel that the laws of the State and the County are not made for a few, but meant to include everyone, and they shall be administered in that manner."

All will agree that federal courts may act only in the context of a justiciable case or controversy. Benton v. Maryland, 395 U.S. 784, 788, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969); Muskrat v. United States, 219 U.S. 346, 356, 31 S.Ct. 250, 55 L.Ed. 246 (1911).

Recently the Supreme Court, in a declaratory judgment action, restated the test of justiciability: "The test to be applied of course, is the familiar one stated in Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941): 'Basically the question in each case is whether * * * there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" Lake Carriers Ass'n. v. MacMullan, 406 U.S. 498, 506, 92 S.Ct. 1749, 1755, 32 L.Ed.2d 257 (1972).

Our duty, therefore, is to resolve whether there is a substantial controversy between the Rincon Band of Mission Indians and the County of San Diego and its sheriff of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

The Rincon Band claims that its members were under a threat of prosecution if they proceeded with plans to establish and maintain a gambling facility on the reservation.

We are satisfied that in the present case the threat is clearly of a general nature, and from the record it cannot be determined if there has been a history of prosecution of non-prosecution under the county ordinance. The record indicates that the threat consisted of appellant's allegations that members of the Sheriff's Department informed a few members of the Band that all gambling is illegal under the county ordinance, and Sheriff O'Connor's response to the Indians' inquiry that the state and county laws are specific as to gambling and all the laws of the county would be enforced within his jurisdiction. Similar threats in Poe v. Ullman, 367 U.S. 497, 501, 81 S.Ct. 1752, 1754, 6 L.Ed.2d 989 (1961) ("* * * in the course of his public duty he [the state's attorney] intends to prosecute any offenses against Con-

necticut law, and that he claims that use of and advice concerning contraceptives would constitute offenses"), and in United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) (possible interference with plaintiffs' rights by the Civil Service Commission under its rules), failed to meet justiciability requirements.

Our brother Browning feels that *Poe* and *United Public Workers* are distinguishable. In *Poe* the statute prohibiting the use of contraceptive devices and giving medical advice in the use of such devices was three-quarters of a century old. In *Rincon* the statute was enacted in 1960, certainly enough time to establish a policy of enforcement or nonenforcement, particularly in the light of the gambling activities at the annual fiestas held at the reservation. Judge Browning's position is that there is nothing to indicate that the *Rincon* ordinance was not being enforced. The burden, however, was on the plaintiff to show by affidavit that the statute was being enforced. It failed in this regard. The only fact before the District Court was a general threat from the Sheriff, not much different than the allegation in the *Poe* complaint quoted above. As Mr. Justice Frankfurter said of such allegation: "The lack of immediacy of the threat described by these allegations might alone raise serious questions of non-justiciability of appellants' claims. See United Public Workers v. Mitchell, 330 U.S. 75, 88, 67 S.Ct. 556, 91 L.Ed. 754." Poe v. Ullman, *supra*, 367 U.S. at 501, 81 S.Ct. at 1754.

With reference to *United Public Workers*, Judge Browning suggests that there was a lack of a threat of enforcement. In *United Public Workers* there was, in fact, a threat of enforcement albeit a general threat. Mr. Justice Reed, in describing the threat, said: "No threat of interference by the Commission with

rights of these appellants appears beyond that implied by the existence of the law and the regulations." 330 U.S. 75 at 91, 67 S.Ct. 556 at 565, 91 L.Ed. 754. He described them further:

> "The threats which menaced the affiants of these affidavits in the case now being considered are closer to a general threat by officials to enforce those laws which they are charged to administer * * *, than they are to the direct threat of punishment against a named organization for a completed act that made the *Mail Association* [Railway Mail Association v. Corsi, 326 U.S. 88, 65 S.Ct. 1483, 89 L.Ed. 2072] and the *Hill* [Hill v. Florida, 325 U.S. 538, 65 S.Ct. 1373, 89 L.Ed. 1782] cases justiciable." *Id.* at 88, 67 S.Ct. at 564.

The threat in *Rincon* was of no greater specificity or immediacy.

Although Sheriff O'Connor asserted that he had been and was then "enforcing the card room and gambling ordinances to all persons equally in the unincorporated areas of the county," there is no proof or suggestion of any specific instances of prosecution under the ordinance. While it is true that appellants have alleged that at their annual fiestas arrests were made, it is nevertheless unclear as to whether the arrests were for violations of the county ordinance or violations for some other reason, and whether they were Indians or non-Indians does not appear. Accordingly, it can hardly be said on this record that there was a history of prosecution under the San Diego gambling ordinance.

Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), one of last year's abortion decisions by the Supreme Court, is not to the contrary. In that case the physician-appellants were found to have presented a justiciable controversy. The Court said:

> "* * * The physician is the one against whom these criminal statutes directly operate in the event he procures an abortion that does not meet the statutory exceptions and conditions. The physician-appellants, therefore, assert a sufficiently direct threat of personal detriment. They should not be required to await

and undergo a criminal prosecution as the sole means of seeking relief. Crossen v. Breckenridge, 446 F.2d 833, 839-840 (C.A.6 1971); Poe v. Menghini, 339 F.Supp. 986, 990-991 (Kan. 1972)." 410 U.S. at 188, 93 S.Ct. at 745.

The Sixth Circuit, in finding a case or controversy to be present in *Crossen,* said that it was not a case "in which there is an apparent state policy of non-enforcement of a criminal statute making its 'mere existence * * * insufficient grounds to support a federal court's adjudication of its constitutionality * * *.' Poe v. Ullman, 367 U.S. 497, 507, 81 S.Ct. 1752, 1758, 6 L.Ed.2d 989." 446 F.2d at 838. The court found that there was "an actual threat of prosecution for performing abortions" because of the history of prosecution under the statute. Also, the physician-plaintiff alleged that he was unable to practice medicine to the best of his professional judgment and ability because of the criminal statute and that he was deterred and hindered in treating patients asking for abortions, thus claiming an interference with the rights of the pregnant women coming to him for treatment. In *Rincon,* the record does not indicate that there is a policy of enforcement of the county ordinance nor do plaintiffs allege actual interference with fundamental rights as does the plaintiff in *Crossen.*

In Poe v. Menghini, *supra,* the court found prosecution to be imminent because of a letter sent to the hospital advising them to cease performing abortions and because of evidence showing an ongoing investigation of the hospital, including harassment and coercion of patients leaving the hospital. *Poe* is distinguishable from *Rincon,* in which the record cannot support a finding of imminent prosecution.

Also, in Doe v. Bolton the Supreme Court found that the Georgia statute was "recent and not moribund" and the successor

to another Georgia statute under which physicians were prosecuted. Again, *Rincon* is distinguishable, since no history of prosecution has been shown. *Cf.* Younger v. Harris, 401 U.S. 37, 42, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

Judge Browning relies on Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968), which concededly we cannot distinguish. Perhaps it is a special case involving First Amendment issues that makes it *sui generis*. In *Epperson* plaintiff, a teacher, challenged an anti-evolution statute. She was not threatened with prosecution, and there was no record of any prosecution under the statute. The statute may have been "more of a curiosity than a vital fact of life." *Id.* at 102, 89 S.Ct. at 269. In any event, the most recent pronouncement by the Supreme Court reenforces our opinion that *Epperson* is not controlling and that *Rincon* does not present a case or controversy. See O'Shea v. Littleton, ... U.S. ....., 94 S.Ct. 669, 38 L.Ed.2d 674 (1974).

We think it is abundantly clear that the general threat of enforcement of the San Diego ordinance and the absence of any arrests for violating such ordinance are insufficient to meet the case or controversy requirements of Article III of the Constitution and the "actual controversy" requirement of the Declaratory Judgment Act, 28 U.S.C. § 2201, and any decision in such circumstances would lack sufficient immediacy and reality.

Judgment reversed, and complaint dismissed.

* * * * * *

BROWNING, Circuit Judge:

I concur except as to Rincon Band of Mission Indians v. County of San Diego, No. 71-927. The controversy in Rincon is as real and immediate as those in Doe v. Bolton, 410 U.S. 179, 93 S.Ct.

739, 35 L.Ed.2d 201 (1973), and Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968). Poe v. Ullman, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989 (1961), and United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947), are distinguishable. Unlike Poe v. Ullman, *Rincon* involves a challenge to a fairly recent ordinance (effective April, 1960). There is nothing to indicate the ordinance was not being enforced. On the contrary, the sheriff stated, though perhaps not as directly as he might, that the ordinance was being enforced and would continue to be. The holding in United Public Workers v. Mitchell rested not only on a lack of a threat of enforcement but also on plaintiffs' failure to specify the kinds of proscribed political activity they intended to engage in. As the Supreme Court noted, the plaintiffs' "generality of objection [was] really an attack on the political expedience of the Hatch Act, not the presentation of legal issues." 330 U.S. at 89, 67 S.Ct. at 564.

APPENDIX C

Statutory Provisions

United States Constitution

Art. III, § 2

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; —between a State and Citizen of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States Code

18 USC § 1162 State Jurisdiction over offenses committed by or against Indians in the Indian country.

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not yet been extended
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section.

28 USC § 1360 State civil jurisdiction in actions to which Indians are parties.

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has juris-

diction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

28 USC § 2201 Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Sec. 37.101. GAMBLING IMPLEMENTS PROHIBITED. It is unlawful for any person within the unincorporated territory of the County to exhibit or expose to view in any barred or barricaded house or room or in any place built or protected in a manner to make it difficult of access or ingress to police officers, when three or more persons are present, any cards, dice, dominoes, fan-tan table or layout, or any part of such layout, or any gambling implements whatsoever; or for any person to visit or resort to any such barred or barricaded house or room or other place in said unincorporated territory built or protected in a manner to make it difficult of access or ingress to peace officers, where any cards, dice, dominoes, fan-tan table or layout, or any such layout, or any gambling implements whatsoever are exhibited or exposed to view when three or more persons are present; or for any person in said County to become a visitor at any place for the practice of gambling in said unincorporated territory.

Sec. 37.102. LETTING PREMISES FOR GAMBLING PROHIBITED. It is unlawful for any person, either as principal, agent, employee, or otherwise knowingly to let or underlet, or transfer the possession of any premises for use by any person, or to permit any house, room, apartment or place owned by him or under his charge or control in the unincorporated territory of the County to be used, in whole or in part, as a gambling house or place for playing, conducting, dealing, or carrying on any game, not mentioned in Section 330 of the Penal Code of the State of California, with cards, dice or other device for money, checks, chips, credit or anything of value.

Sec. 37.103. CONDUCTING HOUSES FOR GAMBLING PROHIBITED. It is unlawful for any person, either as principal, agent, employee, or otherwise, to keep, conduct or maintain within the unincorporated territory of the County any house, room, apartment, or place used in whole or in part as a gambling house or a place where any game, not mentioned in Section 330 of the Penal Code of the State of California, is played, conducted, dealt, or carried on with cards, dice or other device for money, checks, chips, credit or anything of value.

Sec. 37.104. POKER KITTY PROHIBITED. It is unlawful for any person within the unincorporated territory of the County to conduct, carry on, deal, play or bet at or against any game of poker or draw poker, for money, checks chips, credit or anything of value, when such game of poker or draw poker is played with a kitty or take-out, or rake-off, or with or in connection with any device, scheme, or arrangement whereby any portion of the gains, losses, bets, or stakes of said game, or any of the players thereat, is paid to, or taken out, or laid aside for the use or benefit of any person owning, managing, conducting, controlling, or having the control, conduct or management of the room, or apartment or place wherein or whereat such game of poker or draw poker is played, dealt, conducted or carried on.

Sec. 37.105. BETTING ON GAMES PROHIBITED. It is unlawful for any person within the unincorporated territory of the County to conduct, carry on, play at or bet upon any game known as peon, chuck-a-luck or any other game played with cards, dice or other instruments for money or for anything of value whatsoever, or to bet with money or anything of value whatsoever at or upon the result of any of said games or either of them.